

**SENSITIVE**

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**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )

2010 JUL 30 A 10: 18

MUR 6272 )

CASE CLOSURE UNDER THE

Charles "Chuck" DeVore )

ENFORCEMENT PRIORITY SYSTEM

DeVore for California and Betty Presley, )

as treasurer )

Leisa Brug Kline )

Joshua Trevino )

State of California )

**GENERAL COUNSEL'S REPORT**

Under the Enforcement Priority System, matters that are low-rated

are

forwarded to the Commission with a recommendation for dismissal. The Commission has determined that pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss these cases. The Office of General Counsel scored MUR 6272 as a low-rated matter.

In this matter, the complainant, Bob Davis, President of California Citizens for Ethics in Government, alleges that Charles "Chuck" DeVore, a California State Assemblyman and a candidate in the 2010 primary election for the United States Senate from the State of California, used staff from his State Assembly office to work on his Senate campaign, but failed to report their services as in-kind contributions from the State Assembly, which paid their salaries while they worked on his campaign, in violation of 11 C.F.R. §§ 100.54 and 100.74. *See also* 11 C.F.R. § 100.52(d)(1).<sup>1</sup>

<sup>1</sup> Under the Federal Election Campaign Act of 1971, as amended (the "Act"), contributions from individuals to Federal candidates or political committees are subject to disclosure requirements. 2 U.S.C. § 434(b). A "contribution" is defined as: (1) "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office," and (2) "the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose." 2 U.S.C. § 431(8)(A)(i) and (ii); *see also* 11 C.F.R. §§ 100.52 and 100.54. The term "anything of value" includes in-kind contributions of goods and services. 11 C.F.R. § 100.52(d)(1).

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1           The allegations in the complaint are based on information in a news article, which  
2   appeared in the March 24, 2010 edition of the Orange County Register. According to the  
3   article, Leisa Brug Kline, Mr. DeVore's Chief of Staff in the Assembly and his campaign  
4   manager, received \$4,299.78 for campaign work on behalf of Mr. DeVore in 2009, while also  
5   earning \$8,125 a month as a full-time employee for the State Assembly, according to state  
6   payroll records.<sup>2</sup> Joshua Trevino, Mr. DeVore's campaign communications director and a  
7   former part-time senior consultant for Mr. DeVore's State Assembly office, received \$1,500  
8   from Mr. DeVore's Senate campaign in 2009.<sup>3</sup> The article states that Mr. Trevino worked in  
9   Mr. DeVore's Assembly office in 2008, earning \$2,084 a month on a part-time schedule that  
10   required him to be on the job for 50 percent of the work week. Mr. Trevino then left the job,  
11   but returned in March 2009 as a "senior consultant" earning \$5,000 a month on a 60 percent  
12   schedule and, shortly thereafter, joined Mr. DeVore's campaign for U.S. Senate. The  
13   complainant notes that the statement in the news article that Ms. Kline and Mr. Trevino  
14   indicated a willingness to donate their services as "in-kind contributions" to Mr. DeVore  
15   means that a portion of their donated time came from paid time from the State Assembly and  
16   would have to be disclosed as in-kind contributions on campaign finance reports.

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<sup>2</sup> Disclosure reports filed by DeVore for California ("the Committee") in 2009 reflect \$4,299.78 in disbursements to Ms. Kline and \$2,000 in contributions from Ms. Kline to the Committee. Ms. Kline's occupation is listed as "volunteer" on the disclosure reports.

<sup>3</sup> The Committee's 2009 disclosure reports reflect \$1,500 in disbursements to Mr. Trevino for "Campaign Communication Services" and a \$680 disbursement for "campaign lodging at Republican Convention." The reports also reflect contributions totaling \$1,500 from Mr. Trevino to the Committee. Mr. Trevino's occupation is listed as "volunteer" on the disclosure reports.

1 In response, Mr. DeVore asserts that the services were not contributions, but rather  
2 volunteer services, which do not have to be reported.<sup>4</sup> Specifically, Mr. DeVore asserts that  
3 Ms. Kline and Mr. Trevino have been providing services to the campaign, but primarily in a  
4 volunteer capacity.<sup>5</sup> Mr. DeVore asserts that Ms. Kline and Mr. Trevino's hours of work for  
5 the State of California are carefully tracked, in accordance with the Assembly Rules  
6 Committee's procedures.<sup>6</sup> Mr. DeVore further states that Ms. Kline's role as campaign  
7 manager is limited, noting she has "no day-to-day management responsibilities" and his  
8 campaign employs a full-time day-to-day manager with the title of "Chief Operations  
9 Officer."<sup>7</sup> Mr. DeVore adds that Mr. Trevino left his Assembly office to work on another  
10 project, that he re-hired him after he became available, then hired him full time (or almost full  
11 time) for his Senate campaign when the pace of the campaign picked up in early 2010. He  
12 notes that Mr. Trevino, like Ms. Kline, has other outside employment, which has been  
13 approved by the Assembly Rules Committee.

14 In response, the State of California asserts that it is not the proper party in these  
15 proceedings, is not directly or indirectly involved in Mr. DeVore's campaign, and the  
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<sup>4</sup> The Act exempts from the definition of contribution "the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee." 2 U.S.C. § 431(8)(B)(i), 11 C.F.R. § 100.74 (the "volunteer exception"). The definition also excludes: compensation paid on an hourly or salaried basis provided the employee makes up or completes the time taken for political activities within a reasonable time; compensation paid on a commission or piecework basis, or paid only for work actually performed and the employee's time is considered is or her own to use as he or she sees fit; and bona fide vacation or earned leave time. 11 C.F.R. § 100.54.

<sup>5</sup> Mr. DeVore states that Ms. Kline and Mr. Trevino received some compensation for their services and also donated services as in-kind contributions from them. See n. 2 and 3, *supra*.

<sup>6</sup> The news article addresses this issue. Specifically, the article states that Mr. DeVore, Ms. Kline and Mr. Trevino were asked about the relationship between the Assembly office and the campaign and that they "describe[d] in detail the extent to which they work to ensure that there's a clear separation between state duties and duties in the campaign—efforts that include keeping journals of their activities and monitoring their time closely."

<sup>7</sup> According to the news article, Ms. Kline stated she was "not involved in the campaign on a daily basis."

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Commission should address questions regarding the allegations in the complaint to Mr. DeVore's Assembly office or to the California State Assembly.

It appears as though the complaint is speculative as to the nature of the violations. Specifically, there is no evidence submitted by the complainant that indicates that the activities at issue were not volunteer services within the meaning of 11 C.F.R. § 100.74. In addition, Mr. DeVore has denied the allegations in the complaint and his response appears to be consistent with information found on the public record (i.e., news article and disclosure reports).

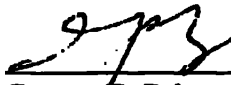
Based on information in the news article, disclosure reports, and Mr. DeVore's response denying the allegations, coupled with the speculative nature of the allegations, and in furtherance of the Commission's priorities and resources, relative to other matters pending on the Enforcement docket, the Office of General Counsel believes that the Commission should exercise its prosecutorial discretion and dismiss this matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985).


#### **RECOMMENDATIONS**

The Office of General Counsel recommends that the Commission dismiss MUR 6272, close the file, and approve the appropriate letters.

Thomasenia P. Duncan  
General Counsel

7/30/10  
Date

BY:   
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